



Arnold Schwarzenegger
Governor

October 18, 2010
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Mr. Jeff Ruster, Director
Silicon Valley Workforce Investment Network
City of San Jose Office of Economic Development
1290 Parkmoor Ave
San Jose, CA 95126

Dear Mr. Ruster:

AMERICAN RECOVERY AND REINVESTMENT ACT
PROGRAM REVIEW
FINAL MONITORING REPORT
PROGRAM YEAR 2009-10

This is to inform you of the results of our review for Program Year (PY) 2009-10 of the work2future's (w2f) activities funded by the American Recovery and Reinvestment Act of 2009 (ARRA). We focused this review on the following areas: program administration, local level monitoring, management information system/reporting, incident reporting, nondiscrimination and equal opportunity, grievance and complaint system, and program operations including ARRA activities and participant eligibility.

This review was conducted by Ms. Jennifer Patel from February 8, 2010, through February 11, 2010.

Our review was conducted under the authority of Sections 667.400 (a) and (c) and 667.410 of Title 20 of the Code of Federal Regulations (20 CFR). The purpose of this review was to determine the level of compliance by w2f with applicable federal and state laws, regulations, policies, and directives related to the ARRA grant.

We collected the information for this report through interviews with w2f representatives, and service provider staff. In addition, this report includes the results of our review of selected case files, w2f's response to Sections I and II of the ARRA Program On-Site Monitoring Guide, and a review of applicable policies and procedures for PY 2009-10.

We received your response to our draft report on August 17, 2010, and reviewed your comments and documentation before finalizing this report. Because your response did not adequately address findings 1, 2, 3, and 4 cited in the draft report, we consider

these findings unresolved. We request that w2f provide the Compliance Review Office with additional information and corrective action plan to resolve the issues that led to the findings. Therefore, these findings remain open and have been assigned Corrective Action Tracking System (CATS) numbers 10113, 10114, 10115, and 10116.

BACKGROUND

For PY 2009-10 ARRA grants, w2f was allocated: \$2,026,103 to serve adult participants; \$4,744,413 to serve youth participants; and \$4,448,400 to serve dislocated worker participants.

For the quarter ending December 31, 2009, w2f reported the following expenditures for its ARRA funded activities: \$549,761 for adult participants; \$3,779,553 for youth participants; and \$673,754 for dislocated worker participants. In addition, w2f reported the following enrollments: 426 adult participants; 590 youth participants; and 327 dislocated worker participants. We reviewed case files for 10 youth participants and 30 adult and dislocated worker participants of the total 1,343 participants enrolled in ARRA funded activities as of February 8, 2010.

PROGRAM REVIEW RESULTS

While we concluded that, overall, w2f is meeting applicable ARRA requirements, we noted instance(s) of noncompliance in the following areas: Youth pre- and post-testing, program grievance/complaint and nondiscrimination/equal opportunity participant notification, right to work documentation, and dislocated worker eligibility documentation. The findings that we identified in these areas, our recommendations, and w2f proposed resolution of the findings are specified below.

FINDING 1

Requirement: WIA Section 136 states, in part, that the purpose of this section is to establish a comprehensive performance accountability system, comprised of the activities described in this section, to assess the effectiveness of States and local areas in achieving continuous improvement of workforce investment activities funded under this subtitle to optimize the return on investment of Federal funds in Statewide and local workforce investment activities.

WIA Section 136(b)(2)(A)(ii)(I) states, in part, that the core indicators of performance (for participants who are eligible youth age 14 through 18) for youth activities shall include attainment of basic skills.

20 CFR Section 667.300(b)(1) states, in part, that a State or direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients.

Training and Employment Guidance Letter (TEGL) No. 17-05 states, in part, that for a participant to be included in the literacy and numeracy gains measurement, the participant must demonstrate on a post-test that he/she has advanced one or more educational functioning levels beyond the level in which he/she was initially placed at pre-test within one year from the date of first youth program service. Additionally, while states, grantees, or contractors are not required to use the same assessment tool throughout their jurisdiction, the following must be adhered to in choosing an assessment tool: (1) the same assessment tool must be administered to the participant for pre-testing and post-testing and (2) tests must be administered in a standardized manner throughout the jurisdiction (i.e., used consistently and reliably across programs and produce observable results). Finally, programs must use one of the assessment tools listed in Attachment C – Educational Functioning Level Descriptors or submit a request to the Department of Labor to use an assessment tool not listed in Attachment C.

Additionally, TEGL 17-05 states, in part, that the assessment instrument is the data source to be used to measure literacy and numeracy gains.

TEGL No. 17-05 Attachment C – Educational Functioning Level Descriptors lists the following approved assessment tools: Adult Basic Learning Examination (ABLE), Test of Adult Basic Education (TABE), Comprehensive Adult Student Assessment System (CASAS), Basic English Skills Test (BEST), and WorkKeys.

The CASAS website <https://www.casas.org/home/> states, in part, that appraisal tests are the initial assessment instruments of the CASAS system. The appraisal aids in the placement of learners into instructional programs and levels within those programs. A CASAS pretest can be administered based on the appraisal score. Progress is then monitored after a specified amount of instructional time with a post-test. Pre- and post-tests are

designed to monitor progress within an instructional level. Appraisals are not appropriate for pre- and post-testing.

WIAD04-17 states, in part, that all recipients of WIA funds will submit client data via the Job Training Automation (JTA) system, complying with the specifications for each data field.

Observation: We found that w2f's youth providers are using the CASAS appraisal test for all steps of its youth literacy and numeracy testing process: appraisal, pre- and post-test. Therefore, the literacy and numeracy test scores reported by w2f in the JTA system are based on the improper use of the CASAS appraisal test for pre- and post-testing.

Recommendation: We recommended that w2f review its literacy and numeracy scores reported for PY 2009-10, back-out any pre- and post-test scores based on w2f appraisal testing, and provide documentation of its action. Additionally, we recommended that w2f provide a corrective action plan (CAP) to address how currently enrolled and future youth participants' literacy and numeracy gains will be appropriately measured and reported.

W2f Response: The w2f stated that it cannot back-out any pre- and post-test scores based on appraisal testing because this would impact its PY 09-10 Youth performance measures (literacy/numeracy gain). Additionally, since most of the clients have exited the system and the performance payments made to service providers were based on youth test scores provided; w2f cannot go back to re-test the clients on pre-and post tests.

Furthermore, w2f stated that its corrective action plan consisted of a system policy change for youth participants for PY 2010-2011. In addition, w2f youth staff and the contractors attended CASAS training to ensure CASAS assessments are administered in a standardized fashion and that the assessment results will provide basis for state and federal accountability reporting. However, no documentation was provided with the response.

State Conclusion: Based on w2f's response, we cannot resolve this issue at this time because w2f did not do what we recommended it do. Furthermore, it does not appear this CASAS training was provided because no documentation was provided with the response.

We again recommend that w2f review its literacy and numeracy scores reported for PY 2009-10, back-out any pre- and post-test scores based on w2f appraisal testing, and provide documentation of its action. More specifically, we recommend w2f, per WSIN08-14 submit a Request for Correction to a Previously Submitted Data Form to the state for approval before any locked data can be deleted or changed and provide CRO documentation of the State's decision regarding whether it is approved or denied.

Therefore, this finding remains open and has been assigned CATS number 10113.

FINDING 2

Requirement:

20 CFR Section 667.275(a)(1) states, in part, that recipients must comply with the nondiscrimination provisions and equal opportunity provisions.

Workforce Services Division Directive (WSD) 07-6 states, in part, that initial and continuing notice of nondiscrimination and equal opportunity procedures and the right to file a complaint must be posted in prominent locations and made available to each participant. In addition, a copy of an acknowledgement of receipt must be signed by the participant and maintained in the participant's case file.

20 CFR Section 667.600(a)(b) states, in part, that each direct recipient of WIA funds must establish and maintain a procedure for grievances and complaints according to the requirements of this section.

WSD08-4 states, in part, that a copy of a written description of the local grievance and complaint procedure shall include notification that the participant has the right to file a grievance or complaint at any time within a year of the alleged violation; instructions and timeline for filing a grievance or complaint; and notification that the participant has the right to receive technical assistance. Finally, a copy of an acknowledgement of the receipt of the local grievance and complaint procedure shall be signed by the participant and included in each participant's case file.

Observation:

We reviewed 30 case files and found none contained a signed participant program grievance/complaint acknowledgement form.

Additionally, none of the 30 case files reviewed contained a signed nondiscrimination/equal opportunity acknowledgement form.

Subsequent to the review, w2f attempted to obtain signatures for all 30 participants and were able to provide documentation for 28. However, it was unable to locate two participants to obtain signatures for either acknowledgement form.

Recommendation: Since w2f cannot locate these two individuals, we recommended that w2f exit both of them and provide the CRO documentation of its actions. We also recommended that w2f provide CRO with a CAP stating how it will ensure, in the future, that a signed participant program grievance/complaint acknowledgement form and signed nondiscrimination/equal opportunity acknowledgement form are maintained in each participant's case file.

W2f Response: The W2f was able to provide documentation for both the participants. The w2f stated that its corrective action plan is to have the Program Manager notify the appropriate parties and issue a formal written corrective action letter to all w2f staff, inclusive of partner staff that are responsible for providing information to the participants. Also, program management will monitor and meet with staff to ensure w2f provides nondiscrimination provisions and equal opportunity provisions to the participants and that the signed documents are filed and stored in a secure location for future reference. However, a copy of the formal written corrective action letter was not provided with the response.

State Conclusion: The w2f's stated corrective action should be sufficient to resolve this issue. However, we have not received the back-up documentation for the issue mentioned above. Therefore, we cannot close this issue until we verify, during a future on-site visit, w2f's successful implementation of its stated corrective action. Until then, this issue remains open and has been assigned CATS number 10114.

FINDING 3

Requirement: 20 CFR 663.105(a-b) states, in part, that registration is the process for collecting information to support a determination of eligibility. Adults and dislocated workers who receive services funder under Title 1 must be registered and determined eligible.

WIAD04-18 also states, in part, that the documentation of an individual's employability (right-to-work) must be conducted in compliance with Title 8, CFR Section 274a.2 which states the federal requirements and procedures persons or entities must comply with when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States. These requirements and procedures are published as the Immigration and Naturalization Service (INS) Form I-9 and take precedence over any State statute and regulation governing alien status determination.

The Form I-9 (Employment Eligibility Verification) lists the acceptable documents that may be used to verify an individual's right-to-work. An individual's identity and employment eligibility must be verified.

WSIN09-40 states, in part, that the Employment and Training Administration (ETA) interprets 'paperless' to be a scanned document that is maintained, a cross match with a non-WIA system, or the State's Management Information System (MIS). It is important to note, though, that when the State MIS is used as the source documentation, there must also be more than a checked box or indication of dates. There must be specific and detailed information that supports the checked box or dates in order to be allowable source documentation. This also applies to the use of a cross match in that the cross match must indicate detailed supporting information and not just the matching of a particular item, for example a Social Security Number. Two data elements, Veteran's Status (for those receiving intensive or training services) and Date of Birth, are the two most stringent for documentation. The allowable source documents for these must be paper in the file, electronically scanned documents, or a cross match with non-WIA system. The Department of Labor (DOL) has recently communicated its position that Local Areas must collect and store specific source documentation (paper or electronic) to enable the validation of data elements related to eligibility, services received, and outcome information used to calculate and support the validity of the performance outcomes reported to ETA.

Office of Management and Budget (OMB) 87, Attachment A, Section (C)(1)(j) states, in part, that for costs to be allowable, they must be adequately documented.

WIAD04-18 states, in part, that Local Workforce Investment Areas are responsible for ensuring that adequate eligibility documentation is contained in their participant case files to minimize the risk of disallowed costs.

Observation: Of the 30 paperless case files we reviewed, none contained scanned documents or cross match results to verify the participant's right to work eligibility. Specifically, we reviewed 15 adult case files and 15 dislocated worker case files.

Subsequent to the review, w2f provided documentation to substantiate right to work for nine of the 15 adult case files. The w2f could not obtain right to work documents for six of the 15 adult case files. Of these six, it was able to contact three participants, but those participants did not comply with w2f requests to provide right to work documentation. Furthermore, w2f was unable to locate the other three participants in question.

Additionally, subsequent to the review, w2f provided documentation to substantiate right to work for 13 of the 15 dislocated worker case files. The w2f was unable to locate two of the 15 participants to obtain right to work documents.

Recommendation: We recommended that w2f provide documentation for the remaining eight participants in question. If w2f cannot provide such documentation, we would then recommend w2f exit the six adult and two dislocated worker participants from the WIA and/or ARRA program and provide documentation to CRO of its actions.

Moreover, if any costs were associated with the participants in question, if they are to be exited then any costs will need to be reversed from the WIA and/or ARRA program, and documentation will need to be provided to CRO of these actions as well.

We also recommended that w2f provide CRO with a CAP stating how it will ensure that scanned documents or cross match results containing right to work documentation is contained in all case files (paper or electronic).

W2f Response: The w2f was able to provide documentation for most of the participants. The w2f stated that based on the guidance from the EDD monitor (monitoring visit from February 8 through

February 11, 2010) it immediately implemented a policy to retain copies of right to work documents, including dislocated worker eligibility documentation. Prior to the monitoring, there was no clarification on a "paperless" system. In addition, w2f stated that any disallowed costs should be the responsibility of the State for the reason that EDD acknowledged responsibility for any Learning Lab that implemented the process outlined in Draft Directive LLDD-10. It further stated future WIB monitoring should sample files from March 2010 and on-going to assure maintenance of eligibility and right to work documentation.

State Conclusion: Based on w2f's response, we cannot resolve this issue at this time because we did not receive right to work documentation for one participant or the requested CAP.

We again recommend that w2f provide CRO with a CAP stating how it will ensure that scanned documents or cross match results containing right to work documentation is contained in all case files (paper or electronic). Until then, this issue remains open and has been assigned CATS number 10115.

FINDING 4

Requirement: WIA 101(9)(A) states, in part, that the term "dislocated worker" means an individual who:

- Has been terminated or laid off, or who have received a notice of termination or layoff, from employment; and
- Is eligible for or has exhausted entitlement to unemployment compensation; or has been employed for a duration sufficient to demonstrate attachment to the workforce, but insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and
- Is unlikely to return to a previous industry or occupation; or
- Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise.

WIAD04-18 provides a list of acceptable documentation to support a participant's dislocated worker status.

WSIN09-40 states, in part, that the Employment and Training Administration (ETA) interprets 'paperless' to be a scanned document that is maintained, a cross match with a non-WIA system, or the State's Management Information System (MIS). It is important to note, though, that when the State MIS is used as the source documentation, there must also be more than a checked box or indication of dates. There must be specific and detailed information that supports the checked box or dates in order to be allowable source documentation. This also applies to the use of a cross match in that the cross match must indicate detailed supporting information and not just the matching of a particular item, for example a Social Security Number. Two data elements, Veteran's Status (for those receiving intensive or training services) and Date of Birth, are the two most stringent for documentation. The allowable source documents for these must be paper in the file, electronically scanned documents, or a cross match with non-WIA system. The Department of Labor (DOL) has recently communicated their position that Local Areas must collect and store specific source documentation (paper or electronic) to enable the validation of data elements related to eligibility, services received, and outcome information used to calculate and support the validity of the performance outcomes reported to ETA.

Office of Management and Budget (OMB) 87, Attachment A, Section (C)(1)(j) states, in part, that for cost to be allowable they must be adequately documented.

WIAD04-18 states, in part, that Local Workforce Investment Areas are responsible for ensuring that adequate eligibility documentation is contained in their participant case files to minimize the risk of disallowed costs.

Observation:

Of the 15 paperless dislocated worker case files we reviewed, none contained scanned documents or cross match results to verify the participants' dislocated worker eligibility.

Subsequent to the review, w2f provided written eligibility descriptions for 13 of the 15 dislocated workers. However, only one of the 13 participants' dislocated worker eligibility was verified; there was no further documentation provided for the other 12 participants. Additionally, as mentioned above, the w2f was unable to locate two of the dislocated worker participants to obtain any eligibility documentation.

Recommendation: We recommended w2f provide documentation to verify the remaining 14 participants were eligible dislocated workers. If w2f cannot locate the two participants noted above, we recommend these two participants be exited from the program immediately and provide CRO with documentation of its actions.

Moreover, if w2f is unable to provide verification documentation for the remaining 12 dislocated worker participants, we also recommend that w2f exit those participants or transfer them to the adult program and provide documentation to CRO of its actions.

We also recommended that w2f provide CRO with a CAP stating how it will ensure that dislocated worker eligibility documentation is contained in all case files (paper or electronic).

W2f Response: The w2f was able to provide documentation for the two dislocated worker participants. For the remaining 13 participants, an EDD specialist was able to verify unemployment insurance for 10 out of the 13 participants. For the remaining three, one participant attended an EDD Re-employment Plan Workshop; one participant was displaced due to a permanent closure; and the last participant was employed in a temporary six month position.

State Conclusion: Based on w2f's response, we cannot resolve this issue at this time because no CAP information and documentation were provided with the response.

We again recommend that w2f provide CRO with a CAP stating how it will ensure that dislocated worker eligibility documentation is contained in all case files (paper or electronic). Until then, this issue remains open and has been assigned CATS number 10116.

We provide you up to 20 working days after receipt of this report to submit your response to the Compliance Review Office. Because we faxed a copy of this report to your office on the date indicated above, we request your response no later than November 16, 2010. Please submit your response to the following address:

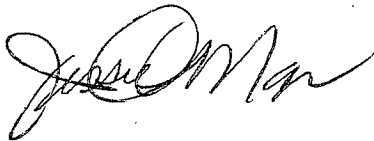
Compliance Monitoring Section
Compliance Review Office
722 Capitol Mall, MIC 22M
P.O. Box 826880
Sacramento, CA 94280-0001

In addition to mailing your response, you may also FAX it to the Compliance Monitoring Section at (916) 654-6096.

Because the methodology for our monitoring review included sample testing, this report is not a comprehensive assessment of all of the areas included in our review. It is w2f's responsibility to ensure that its systems, programs, and related activities comply with the ARRA grant program, federal and state regulations, and applicable state directives. Therefore, any deficiencies identified in subsequent reviews, such as an audit, would remain w2f's responsibility.

Please extend our appreciation to your staff for their cooperation and assistance during our review. If you have any questions regarding this report or the review that was conducted, please contact Mrs. Jennifer Shane at (916) 654-1292.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessie Mar", written in a cursive style.

JESSIE MAR, Chief
Compliance Monitoring Section
Compliance Review Office

cc: Jose Luis Marquez, MIC 50
Dathan O. Moore, MIC 50
Doug Orlando, MIC 50
Daniel Patterson, MIC 45